UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,860	10/02/2003	Bernd Greifeneder	06896/100M098-US1	2441

7278 7590 01/12/2009
DARBY & DARBY P.C.
P.O. BOX 770
Church Street Station
New York, NY 10008-0770

EXAMINER	
ABEL JALIL, NEVEEN	

ART UNIT	PAPER NUMBER
2165	

MAIL DATE	DELIVERY MODE
01/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	**Application No.** 10/678,860	**Applicant(s)** GREIFENEDER ET AL.	
	Examiner NEVEEN ABEL JALIL	**Art Unit** 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _9/25/08_.
2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-14 and 16-20_ is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) _1-14 and 16-20_ is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a)☐ All b)☐ Some * c)☐ None of:
1.☐ Certified copies of the priority documents have been received.
2.☐ Certified copies of the priority documents have been received in Application No. _____.
3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 25-September -2008 has been entered.

2. The amendment filed on 25-September -2008 has been received and entered. Claims 1-14 and 16-20 are pending.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-14, and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Masters et al. (U.S. Patent No. 7,051,098 B2).

As to claim 1, Masters et al. discloses a system for managing and monitoring one or more computer systems, said system comprising:

a computer having a processor, a storage device, a memory device and a network device configured to receive monitoring information from one or more remotely located computer systems, the monitoring information concerning the operation of the one or more respective remotely located computer systems (See Figure 1B, and see column 1, lines 24-37, background of the invention); and

a computer readable medium encoded with a monitoring computer program (See Figure 1A, wherein "medium" reads on "operating system") configured to instruct the computer to perform the steps of:

acquiring instructions from a configuration stored in the computer storage device (See column 8, lines 43-53), said configuration including a service table identifying one or more services provided by the remotely located computer systems that are useable to monitor at least one of said computer systems (See column 47, lines 11-25, and see column 31, lines 1-10, service appears to broadly described in the specification and may not even exist for some sources, therefore, it is broadly interpreted to be any broad functionality, wherein the recitation of "that are useable" should be deleted since it provides an intended use instead of the actually functionality of "to monitor"), the services being non-monitoring specific and the remotely located computer systems absent the monitoring (See column 10, lines 20-39, wherein "host monitors collect statistics about remotely located files systems etc."),_a detection table identifying information utilized to detect at least one of the accessible data sources (See column 46, lines 29-39, wherein only "interested processes" are being tabled by the detecting host monitor), and a metric table identifying a metric for the at least one data source (See column 13, lines 18-24, wherein any collected metric is stored and thus placed in a table);

using a data source detection module to detect accessible services in said one or more remotely located computer systems (See column 7, lines 33-55);

probing said one or more remotely located computer systems for one or more accessible data sources related to the detected accessible services (See column 9, lines 27-35, and see column 19, lines 1-19);

selecting at least one metric related to at least one of the accessible data sources (See Figure 7A, shows the metric "CPU utilization", and metric "Packets in" selected by user for view);

probing said one or more data sources based on the instructions acquired from the configuration for accessible data sources (See column 11, lines 40-50);

generating a list of the accessible data sources for the selected metric in said probed computer systems (See column 10, lines 40-52, and see column 11, lines 31-50) said list comprising a subset of combinations of said data sources specified by said configuration (See column 8, lines 60-65, also see column 10, lines 64-67);

retrieving from at least one of said accessible data sources monitoring information corresponding to the at least one selected metric (See Figure 7A, shows the metric "CPU utilization" , and metric "Packets in" selected by user for view), the monitoring information comprising a response from at least one of the services provided by the remotely located computers systems.(see column 31, lines 35-54).

As to claim 2, Masters et al. discloses wherein the data sources are monitoring information sources in said one or more computer systems (See Figure 1B, shows host monitors); and

the at least one metric is related to said monitoring information sources, said metric being detected by the data source detection module to output said list of said accessible data sources (See column 56, lines 25-33, claim language, it is unclear which metric is being referenced, the selected or the identified one).

As to claim 3, Masters et al. discloses further comprising:

provide monitoring information of one of said computer systems (See column 10, lines 40-52); and

probe said monitoring information to monitor the one of said computer systems (See Figure 1B, shows various agents i.e. probe).

As to claim 4, Masters et al. discloses further configured to:

collect performance information from said data sources utilizing data collection tools (See column 9, lines 47-59), and

receive from a user a selection of said data sources for monitoring (See column 24, lines 45-60, wherein the recitation of "for" is interpreted as intended use and should be replaced with "to be").

As to claim 5, Masters et al. discloses further configured to:

provide an interactive graphical user interface for user interaction with said data source detection module and said data collection tools (See column 24, lines 45-60).

As to claim 6, Masters et al. discloses a method for automated detection of monitoring data sources of at least one remotely located computer system, said method comprising the steps of:

providing a configuration containing instructions to query at least one of said at least one remotely located computer system (See corresponding rejection in claim 1 above), said configuration comprising a service tale identifying one or more services provided by the remotely located computer systems that are useable to monitor said at least one computer system (See corresponding rejection in claim 1 above), the service being non-monitoring specific and the remotely located computer systems absent the monitoring computer program (See corresponding rejection in claim 1 above), a detection table identifying information to detect at least one for the monitoring data sources (See corresponding rejection in claim 1 above), and a metric table identifying a metric for the at least one of the monitoring data sources (See corresponding rejection in claim 1 above);

providing a data detection module (See corresponding rejection in claim 1 above);

identifying, by said data detection module using said configuration, accessible data sources of at least one of said at least one computer system (See corresponding rejection in claim 1 above);

collecting from at least one of said computer systems meta and performance information of said accessible data sources of at least one of said at least one computer system (See Figure

10A, shows meta and performance data), the meta and performance information comprising a response from at least one of the services provided by the remotely located computers systems (See column 47 lines 11-25);

embedding an expert's knowledge concerning monitoring information services into a monitoring-configuration in software used to automate said step of collecting meta and performance information (See column 42, lines 35-39);

presenting said meta and performance information to a user (See Figure 5A); and

presenting a list of said identified accessible data resources to said user (See corresponding rejection in claim 1 above).

As to claim 7, Masters et al. comprising the step of:

receiving access information from said user, wherein said access information comprises one member of the group consisting of a username and a password (See column 15, lines 55-56).

As to claim 8, Masters et al. discloses comprising the steps of:

receiving a list of data sources chosen by said user (See Figure 10A, shows meta and performance data for user selected data sources);

extracting said meta and performance data from said chosen data sources (See Figure 10A, shows meta and performance data); and

presenting said meta and performance data to said user (See Figure 10A, shows meta and performance data).

As to claim 9, Masters et al. discloses comprising the step of:

utilizing a probe engine to verify whether a service of one of said at least one computer system is responding determining said meta and performance data of an environment in which said service is running, in response to said probe engine verifying said service is running (See column 11, lines 47-50, and see column 19, lines 4-24).

As to claim 10, Masters et al. discloses wherein the service probing step is performed for each service of said at least one computer system (See Figure 5A, and see column 10, lines 40-53, wherein due to the lack of description of what service type is, its hard to attribute service type).

As to claim 11, Masters et al. discloses comprising the step of:

utilizing said probe engine to identify at least one monitoring information source in said at least one computer system and stores said monitoring information source in a list of said at least one identified monitoring information sources (See column 24, lines 17-29, wherein "probe" is read on "agent").

As to claim 12, Masters et al. discloses wherein the monitoring information source probing step utilizes the probe engine to identify the monitoring information source and storing the monitoring information source in the list of detected monitored information sources are performed for each monitoring information source of said at least one computer system (See column 20, lines 1-10).

As to claim 13, Masters et al. discloses comprising the step of:

utilizing said probe engine to determine a metric associated with each of said monitoring information sources (See Figure 10A, shows meta and performance data).

As to claim 14, Masters et al. discloses wherein said meta information comprises set-up information of said at least one computer system (See Figure 10A, shows meta and performance data).

As to claim 16, Masters et al. discloses wherein said list receiving step comprises receiving a range of data sources of said network environment, said range being specified by said user (See column 49, lines 8-26).

As to claim 17, Masters et al. discloses wherein:

the monitoring information is associated with a first service type (See Figure 5A, and see column 10, lines 40-53, wherein due to the lack of description of what service type is, its hard to attribute first and second type);

the probing step corresponds to a second service type (See Figure 5A, and see column 10, lines 40-53, wherein due to the lack of description of what service type is, its hard to attribute first and second type); and the probing step is performed in response to the first service type of the monitoring information (See Figure 5A, and see column 10, lines 40-53, wherein due to the lack of description of what service type is, its hard to attribute first and second type).

As to claim 18, Masters et al. discloses wherein the lists of the accessible data sources and the detected metrics are populated while the probing step identifies all of the accessible data sources and detected metrics (See column 11, lines 1-10).

As to claim 19, Masters et al. discloses wherein each of said services identified in said service table are associated with a service type, the method further comprising the step of activating a probe engine according to at least one service type, wherein the probe engine probes a monitoring information service to monitor information of the computer system (See column 25, lines 24-45, wherein "service type" is read on applications "specific to host system").

As to claim 20, Masters et al. discloses wherein the step of collecting meta and performance further comprises populating the list of the accessible data sources, wherein the list of the accessible data sources is initially empty (See column 24, lines 45-66, wherein "empty" reads on "user controlled" and can be populated according to modification made to the configuration).

Response to Arguments

Applicant's arguments filed on 9/25/08 have been fully considered but they are not persuasive.

Applicant’s argument that the cited reference does not teach "one or more services provided by the remotely located computer systems that are useable to monitor at least one of said computer systems, the services being non-monitoring specific and the remotely located computer systems absent the monitoring computer program” is respectfully noted but not found to be persuasive.

Applicant’s specification descries the non-service as “CPU utilization” of a processor on page 9, lines 11-17, thus no different than Masters et al.’s column 47 lines 11-25:

> The History Server function of Resource Management acts as a data broker between daemons monitoring individual hosts, known as host monitors FG10A FG10N, and other functional components of Resource Management. The host monitors collect performance information (such as CPU utilization and process status data) from hosts of various platforms (SGI, SUN, HP, Windows NT, and Linux). The host monitors use a RMComms TCPCommServer object to distribute this data. For further information, refer to the host monitor and RMComms documentation. The History Server s FG12A FG12N collect and store this data from the host monitors FG10A FG10N and distribute it to other Resource Management Clients, such as the Host Displays FG62A FG62N, Graph Display FG69A FG69N, Path Display FG64, and the Hardware Broker

All those metrics are monitored and collected remotely from the host system.

Applicant’s specification does not exclude the embodiment of monitoring local systems as stated on page 4 and page 21.

Masters’ detect remote data source (i.e. monitored hosts) probes those sources (i.e. host monitors) for accessible services (i.e. CPU utilization) and retrieves the accessible services monitoring information (i.e. statistics, workload, etc.).

While, Masters does require all monitored computers to execute specialized monitoring software, is not any different from Applicant's specification page 10 lines 5-10, wherein the probing engine must provide common interface and be validated (i.e. accepted to be reachable) and page 21, lines 11-19, wherein the software is stored locally on the same computer being monitored.

There is no mention found in Applicant's specification to support that the network/computer designated for monitoring is not executing a specialized software, nor is there any suggestion that such configuration is excluded, in fact, it appears from Applicant's examples given in the background of the invention (page 2 and later on page 18) that the monitoring is being preformed similar to Masters' daemon software (see column 48, lines 11-35).

Applicant's argument that the cited reference does not teach "monitoring information comprises a response from at least one of the services provided by the remotely located computers systems" is respectfully noted but not found to be persuasive.

Masters' history server collects information that is remote from the host as stated in column 46, lines 40-61. Furthermore, Applicant's specification on page 4, lines 20-24 describes the "computer system" as either one or more computer or any number of devices such as networking devices" thus giving a broad meaning to the term "remotely". It is also within the knowledge of one of ordinary skill in the art that Daemons and SNMP (taught by Masters) are used for remote network monitoring.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

For remaining cited art, see PTO form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christian P. Chace can be reached on 571-272-4190. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neveen Abel-Jalil
January 8, 2009
/Neveen Abel-Jalil/

Primary Examiner, Art Unit 2165